IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFAs No.69 & 218 of 2000
Reserved on:20.08.2007.

Decided on: September 27, 2007

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1. RFA No.69 of 2000:

Jagdish & Ors. ***…..Appellants.***

Versus

State of H.P. & Anr. ***…..Respondents.***

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2. RFA No.218 of 2000:

State of H.P. & Anr. ***…Appellants.***

Versus

Jagdish & Ors. ***…Respondents.***

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The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants:	**Mr.G.D.Verma, Sr.Advocate, with Mr.Romesh Verma, Advocate, for the appellants in RFA No.69 of 2000 & for respondents in RFA No.218 of 2000.**
For the Respondents:	**Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G. for appellants in RFA No.218 of 2000 & for respondents in RFA No.69 of 2000.**

Kuldip Singh, Judge

This judgment shall dispose of RFA No.69 of 2000 and RFA No.218 of 2000 which have arisen out of award dated 22.9.1999 passed by learned Additional District Judge, Solan in

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

Petition No.1-S/4 of 1997/96. Land owners have come in appeal in RFA No.69 of 2000 and RFA No.218 of 2000 has been filed at the instance of State and Land Acquisition Collector.

2. The brief facts of the case are that notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was issued on 14.11.1993 and was published in gazette on 18.12.1993 for acquiring land measuring 7-10 Bighas situate in Mauza *Shungal*, *Tehsil Kandaghat, District Solan*. The Land Acquisition Collector (for short 'Collector') passed the award on 24.2.1995. The Collector assessed the market value of the land at Rs.2001.80 per Bigha. The land owners were not satisfied with the market value of the land assessed by the Collector, therefore, they filed reference petition under Section 18 of the Act. The learned Additional District Judge enhanced the compensation by Rs.40,000/- per Bigha. On this amount solatium at the rate of 30% and other statutory payments, interest were also allowed vide award dated 22.2.1999. The land owners as well as State are aggrieved by the impugned award and have filed RFA No.69 of 2000 and RFA No.218 of 2000 against the impugned award, as noticed above. The land owners are claiming more compensation whereas according to State compensation on the higher side has been awarded by the reference Court. Hence, two sets of appeals.

3. I have heard the learned Senior counsel for the land owners as well as learned Advocate General for the State and gone through the record. The learned senior counsel representing the land owners has submitted that learned Additional District Judge has not properly appreciated the material on record and has awarded less compensation to the land owners. The learned Advocate General has submitted that reference Court has awarded compensation to the land owners on the higher side.

4. PW-1 Bhaskra Nand Sharma has stated that acquired land is at a distance of half kilometer from the national highway. The land was fit for construction of factories and hotels. The land was acquired for construction of road. The cutting of the road has damaged their other lands, water channel and trees. The market value of the land at the time of notification was Rs.5 lacs per Bigha but in the sale deeds rate has been mentioned at Rs.1 lac per Bigha. He has not produced any documentary evidence in support of alleged loss caused to other land, water channel and trees of the land owners by the construction of the road, nor he has placed any document on record to show that the market value of the land in the area of the acquired land at the time of notification under Section 4 of the Act was Rs.5 lacs or Rs.1 lac per Bigha. In cross examination, he has admitted that classification of acquired land was *Ghasni.*

5. PW-2 Paras Ram has stated that he owns land adjacent to acquired land, his land is situated in village Shadyal. He sold one Bigha land for Rs.1 lac to Prithvi Chand Thakur vide sale deed Ext.PW-2/A. His village is near to national highway. In cross examination, he has stated that he sold the land in 1991. He has stated that acquired land is in Panchayat and there is no commercial construction near the acquired land.

6. PW-3 Bal Krishan has stated that he purchased two Biswas land vide sale deed Ext.PW-3/A for Rs.35,000/- from Om Parkash. The acquired land is at a distance of one furlong from the land which he purchased.

7. RW-1 Sheesh Ram, Patwari has proved copy of award Ext.RW-1/A, field book Ext.RW-1/B, Tatima Ext.RW-1/C, assessment and list of trees Ext.RW-1/D, assessment RW-1/E which is part of award Ext.RW-1/A. The average value of the acquired land was obtained from District Revenue Officer, Solan vide Ext.RW-1/F. As per record, acquired land is at a distance of 1 ½ kilometers from the road. The acquired land was *Ghasni.* This is the entire evidence led by the parties.

8. The notification under Section 4 of the Act was published in official gazette on 18.12.1993. The market value of the acquired land is to be seen at the time of notification under Section 4 of the Act. The sale deed Ext.PW3/A is dated 1.3.1994. PW-3

vendee in sale deed Ext.PW-3/A has stated that he purchased the land for construction of house. He has not stated anything about the comparability of the land sold vide Ext.PW-3/A and acquired land. The sale deed Ext.PW-3/A was executed after the notification under Section 4 of the Act, therefore, sale deed Ext.PW-3/A is of no help to land owners for assessing the market value of the acquired land.

9. PW-2 Paras Ram vendor of sale deed Ext.PW-2/A has sold one Bigha land to Prithvi Chand Thakur for Rs.1 lac on 13.6.1991. It has come on record that Shadyal and Shungal are adjacent villages. It is not the case of the State that prior to notification under Section 4 of the Act lands were sold in village Shungal. In these circumstances, sale deed Ext.PW-2.A can be relied for assessing the market value of the acquired land. The sale deed Ext.PW-2/A is of one Bigha which is small area in comparison to 7-10 Bighas acquired land of the land owners. Therefore, appropriate deduction is to be made from the rate of land at which land covered by sale deed Ext.PW-2/A was sold. There is no evidence on record regarding the comparability of the acquired land and the land covered by sale deed Ext.PW-2/A. PW-1 Bhaskra Nand Sharma has stated that acquired land is at a distance of half kilometer from national highway, even RW-1 Sheesh Ram has admitted that as per their record acquired land is at a distance of 1 ½

kilometers from the road. The learned Additional District Judge has allowed enhanced compensation of the acquired land at Rs.40,000/- per Bigha. In the impugned award detail reasons have not been given how enhanced compensation at Rs.40,000/- per Bigha has been assessed. The sale deed Ext.PW-2/A is of small area and, therefore, after applying 60% deduction to the rate at which land covered by sale deed Ext.PW-2/A was sold and the fact that there is no exact evidence regarding the comparability of the acquired land as well as land covered by sale deed Ext.PW-2/A the enhanced compensation of acquired land at Rs.40,000/- per Bigha assessed by learned Additional District Judge is not on the higher side. The land owners have failed to make out any case for further enhancement of compensation. Similarly, the State has also not made out any case for reduction of compensation assessed in the impugned award. The enhanced compensation at Rs.40,000/- per Bigha of the acquired land assessed by the reference Court thus requires no interference.

10. The land owners have not placed any worth believing material on record to show damage to their trees, other land, water channel etc. The bald statement of PW-1 in this respect is not sufficient. The land owners have not supported their this part of the claim by leading other reliable evidence. In award Ext.RW-1/A it has been specifically recorded that possession of the acquired land

till the passing of the award by the Collector was not taken. The learned Additional District Judge has rightly awarded other amounts and interest on enhanced compensation.

11. The result of the above discussion is both the appeals being RFA No.69 of 2000 and RFA No.218 of 2000 are dismissed with no order as to costs.

September 27, 2007 ***(Kuldip Singh)***
(soni) ***Judge.***